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16
17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 Marcia Clayton,
20 Plaintiff,
21 vs.
22 Performant Recovery, Inc.; and DOES 1-
23 10, inclusive,
24 Defendants.

25 Case No.: 4:14-cv-3921

26 **COMPLAINT FOR DAMAGES**
27 **1. VIOLATION OF FAIR DEBT**
28 **COLLECTION PRACTICES ACT,**
15 U.S.C. § 1692 ET. SEQ;
JURY TRIAL DEMANDED

1 For this Complaint, Plaintiff, Marcia Clayton, by undersigned counsel, states as
2 follows:
3

4 1. This action arises out of the Defendants' repeated violations of the Fair
5 Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), and the
6 invasions of the Plaintiff's personal privacy by the Defendants and their agents in their
7 illegal efforts to collect a consumer debt.
8

9 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1337.
10

11 3. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b), in that
12 the Defendants transact business in this District and a substantial portion of the acts
13 giving rise to this action occurred in this District.
14

PARTIES

15 4. The Plaintiff, Marcia Clayton ("Plaintiff"), is an adult individual residing
16 in Nixa, Missouri, and is a "consumer" as the term is defined by 15 U.S.C. §
17 1692a(3).
18

19 5. Defendant Performant Recovery, Inc. ("Performant"), is a California
20 business entity with an address of 333 North Canyons Parkway, Suite 100, Livermore,
21 California 94551, operating as a collection agency, and is a "debt collector" as the
22 term is defined by 15 U.S.C. § 1692a(6).
23

24 6. Does 1-10 (the "Collectors") are individual collectors employed by
25 Performant and whose identities are currently unknown to the Plaintiff. One or more
26
27

1 of the Collectors may be joined as parties once their identities are disclosed through
2 discovery.

4 7. Performant at all times acted by and through one or more of the
5 Collectors.

ALLEGATIONS APPLICABLE TO ALL COUNTS

The Debt

9 8. The Plaintiff allegedly incurred a financial obligation (the “Debt”) to an
10 original creditor (the “Creditor”).

15 10. The Debt was purchased, assigned or transferred to Performant for
16 collection, or Performant was employed by the Creditor to collect the Debt.
17

18 11. The Defendants attempted to collect the Debt and, as such, engaged in
19 “communications” as defined in 15 U.S.C. § 1692a(2).

21 | Performant Engages in Harassment and Abusive Tactics

22 12. In February of 2014, Performant began calling Plaintiff in an attempt to
23 collect the Debt.

25 13. Performant called Plaintiff at her place of employment in an attempt to
26 collect the Deb.

1 14. Plaintiff informed Performant that the calls to her workplace were
2 inconvenient and prohibited by the policy of her employer and directed Performant to
3 cease dialing her work number.
4

5 15. Performant thereafter continued calling Plaintiff at her place of
6 employment despite Plaintiff's request, causing frustration and distress to Plaintiff.
7

8 16. Moreover, Performant spoke with Plaintiff's co-worker and disclosed the
9 nature of the call, causing embarrassment to Plaintiff.
10

11 17. Performant asked Plaintiff's co-worker whether Plaintiff was a part-time
12 or full-time employee.
13

14 18. In addition to calls to Plaintiff's place of employment, Performant placed
15 excessive calls to Plaintiff's cellular telephone at a rate of two to three calls per day.
16

17 19. Performant failed to identify itself to Plaintiff and failed to inform
18 Plaintiff that the call was an attempt to collect the Debt and all information obtained
19 would be used for that purpose.
20

Plaintiff Suffered Actual Damages

21 20. The Plaintiff has suffered and continues to suffer actual damages as a
22 result of the Defendants' unlawful conduct.
23

24 21. As a direct consequence of the Defendants' acts, practices and conduct,
25 the Plaintiff suffered and continues to suffer from humiliation, anger, anxiety,
26 emotional distress, fear, frustration and embarrassment.
27
28

COUNT I
VIOLATIONS OF THE FDCPA - 15 U.S.C. § 1692, ET SEQ.

3 22. The Plaintiff incorporates by reference all of the above paragraphs of this
4 Complaint as though fully stated herein.

5 23. The Defendants' conduct violated 15 U.S.C. § 1692c(a)(1) in that
6
7 Defendants contacted the Plaintiff at a place and during a time known to be
8 inconvenient for the Plaintiff.

9 24. The Defendants' conduct violated 15 U.S.C. § 1692c(a)(3) in that
10 Defendants contacted the Plaintiff at his place of employment, knowing that the
11 Plaintiff's employer prohibited such communications.
12

13 25. The Defendants' conduct violated 15 U.S.C. § 1692c(b) in that
14
15 Defendants communicated with individuals other than the Plaintiff, the Plaintiff's
16 attorney, or a credit bureau.

21 27. The Defendants' conduct violated 15 U.S.C. § 1692d(5) in that
22
23 Defendants caused a phone to ring repeatedly and engaged the Plaintiff in telephone
24 conversations, with the intent to annoy and harass.

25 28. The Defendants' conduct violated 15 U.S.C. § 1692d(6) in that
26
27 Defendants placed calls to the Plaintiff without disclosing the identity of the debt

collection agency.

29. The Defendants' conduct violated 15 U.S.C. § 1692e(11) in that Defendants failed to inform the consumer that the communication was an attempt to collect a debt.

30. The Defendants' conduct violated 15 U.S.C. § 1692f in that Defendants used unfair and unconscionable means to collect a debt.

31. The foregoing acts and omissions of the Defendants constitute numerous and multiple violations of the FDCPA, including every one of the above-cited provisions.

32. The Plaintiff is entitled to damages as a result of Defendants' violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendants:

1. Actual damages including, but not limited to, the emotional distress the Plaintiff has suffered (and continues to suffer) as a result of the intentional, reckless, and/or negligent FDCPA violations and intentional, reckless, and/or negligent invasions of privacy pursuant to 15 U.S.C. § 1692k(a)(1);
 2. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A);
 3. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3);
 4. Punitive damages; and
 5. Such other and further relief that the Court may deem just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

1 DATED: August 29, 2014
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3 TRINETTE G. KENT
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5 By: /s/ Trinette G. Kent
6 Trinette G. Kent, Esq.
7 Lemberg Law, LLC
8 Attorney for Plaintiff Marcia Clayton
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